

OREN ROSENSHINE
AMIR ROSENSHINE

vs.

Defendants

**DECLARATION OF YERMI MIZRAHI IN SUPPORT OF
A. MESHI COSMETICS INDUSTRIES LTD.’ MOTION TO DISMISS**

I Yermi Mizrahi hereby declare as follows:

1. I am over the age of 18 and I am otherwise competent to make this declaration. I am providing this declaration voluntarily.
2. All the statements herein are within my personal knowledge and are true and correct to the best of my knowledge.
3. I submit this declaration in support of A. Meshi Cosmetics Industries Ltd's ("Meshi") Motion to Dismiss.
4. The following statements are true during the entire period at issue in the Complaint and currently.

I Background

5. I am an Israeli national and I reside and am domiciled in Israel.
6. I have been the President and Chief Executive Officer of Meshi since 2014.



7. Meshi is an Israeli company, number 511947020.
8. Meshi's headquarters and principal place of business are at 8 Shimon HaBurseki Street, Bat Yam, Israel.
9. Meshi's primary business is the manufacture of hair and skin care products under the "Mon Platin" label.
10. Although Meshi's products are sold around the world, Meshi does not maintain any offices or employees anywhere other than in Israel.
11. Meshi has relationships with various independent distributors around the world. These distributors manage all aspects of on-ward sales of Meshi's products.
12. Meshi is not and has never been authorized or registered to do business anywhere in the United States, including in New York.
13. Meshi has never made any direct or "retail" sales to New York or the United States.
14. Meshi does not maintain any office, place of business or mailing address in New York or the United States.
15. Meshi does not own, use or possess any real property in New York or the United States or maintain any telephone listing in New York or the United States.
16. Meshi does not pay taxes in New York or the United States.
17. Meshi does not maintain a bank account in the United States.
18. Meshi does not have an agent for service of process in New York or in the United States and was served with process of these proceedings in Israel.

II Meshi's business model

19. Meshi is purely a manufacturer. All of Meshi's products are sold on an "ex-work" basis. This means that Meshi manufactures the relevant product at its



factory in Israel and notifies the purchaser when the product is ready for collection. The purchaser then arranges collection from Meshi's Israel plant and has complete authority and discretion regarding all aspects of onward shipping and resale.

20. Meshi's products are sold through various distributors, each of whom is entirely independent from Meshi.
21. Meshi has only ever sold Star Gel to GMIE and to AZ. Meshi's only sale of Star Gel to AZ was a one-time sale on or around November 23, 2016.
22. Meshi has not otherwise sold Star Gel, including in New York or in the United States.
23. Meshi has never engaged in any marketing efforts in respect of Star Gel in New York or the United States.
24. Meshi has never arranged for Star Gel to be exhibited at trade shows in New York or in the United States.

III 2004 Agreement with GMIE

25. In 2004 Meshi agreed to manufacture Star Gel for GMIE.
26. The agreement was on ex-work terms. GMIE collected Star Gel from Meshi's factory in Israel and had complete authority over all aspects of onward shipping and resale.
27. As far as I am aware Meshi negotiated the agreement completely from Israel and executed the agreement in Israel.
28. As far as I am aware none of Meshi's employees have visited New York in connection with this agreement.
29. Payments under this agreement were made to Meshi's account in Israel.
30. Between 2004 and 2012, Meshi supplied approximately USD 10,000 worth of



Star Gel to GMIE on an annual basis.

31. Meshi has not supplied any Star Gel to GMIE or its successors since 2012.
32. All of the Star Gel supplied under this agreement was provided on an “ex-work” basis.

IV Sale of Star Gel to AZ

33. Meshi did not sell any Star Gel following 2012 until it was approached by AZ in 2016.
34. Before that sale Meshi did not have any relationship with AZ or any sort of distributorship arrangement with AZ nor has Meshi had any sort of relationship with AZ since the sale.
35. In or around October 2016 I received a call and then an email from Eyal Noach on behalf of AZ, saying he was looking for the manufacturer of Star Gel and wanted to place an order.
36. Meshi made a one-time sale of Star Gel to AZ on November 23, 2016. The total value of the sale was USD 10,800.
37. The agreement between Meshi and AZ was negotiated and executed in Israel.
38. The agreement was on an “ex-work” basis: Meshi agreed to manufacture the Star Gel and to make it available at its factory in Israel for collection by AZ. AZ was responsible for all aspects of onward sales outside of Israel once it collected the Star Gel from Meshi.
39. AZ is an independent distributor and Meshi did not have an agreement or authority over AZ’s discretion regarding where to sell Star Gel in the United States or otherwise.
40. Meshi did not direct or instruct AZ to resell the Star Gel in New York.
41. Meshi had no communication with AZ regarding the onward sale of Star Gel



after the initial sale of the product.

- 42. Payment under this agreement was to Meshi's bank account in Israel.
- 43. AZ sent me the artwork and information file to use to print the label for the Star Gel sold to AZ. This label, including AZ's New York address, was entirely created and chosen by AZ.

V Meshi's website

- 44. Meshi's website is purely for informational purposes. It is not interactive in the sense that customers cannot make purchases from the website.
- 45. Meshi's website has never been capable of making sales of products to customers in New York or in the United States and accordingly Meshi has never sold products to customers in New York or the United States through its website.

VI Meshi's relevant revenue figures

- 46. Between 2016 to 2019, Meshi derived a total of approximately USD 300,000 in revenues from sales of its products in New York.
- 47. These revenues represent less than 1% of the revenues Meshi derived during the same period from global sales of its products.

VI Alleged tortious activities

- 48. Meshi did not approach AZ as alleged nor did Meshi deceive AZ in any way.
- 49. Meshi similarly has not sought to deceive any other parties regarding Star Gel.
- 50. Meshi has not sold or distributed any Star Gel since its sale to AZ in 2016 and accordingly has not continued to sell or distribute Star Gel at any point after June 20, 2017, the date on which Plaintiffs allege they sent cease and desist letters.



I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Bat Yam, Israel

Executed this 3 day of June 2019

Yermi Mizrahi

